

CONTRACT FOR AUDITING SERVICES

BETWEEN

THE UTAH STATE AUDITOR'S OFFICE

and

[CPA FIRM NAME]

THIS AGREEMENT, entered into as of this ____ day of ____, by and between the Utah State Auditor's Office ("OFFICE") and the firm of _____, ("AUDITOR") provides for auditing services, specifically, an audit to be made of [Auditee] ("INSTITUTION") as more specifically described below.

WITNESSETH THAT:

WHEREAS, the OFFICE is required by law to audit all agencies and institutions of the State of Utah (the "State"), including the various colleges and universities, and

WHEREAS, the OFFICE desires to issue a timely auditor's opinion on the State's annual financial report, which will include all state agencies and institutions in accordance with the Governmental Accounting Standards Board (GASB) Statement 14, *The Financial Reporting Entity*, and

WHEREAS, the INSTITUTION will be included in the State's financial report in a discrete presentation and would therefore require a financial and compliance audit, and

WHEREAS, in order to meet the requirements of the above mentioned guidelines the OFFICE desires to have performed an annual financial and compliance audit of the INSTITUTION for the 1999, 2000, 2001, 2002, and 2003 fiscal years ending June 30 (individually, a "Fiscal Year", collectively, the "Fiscal Years"), and

WHEREAS, the INSTITUTION has received from the Federal Government funds under grants, agreements, and programs which require audits under the guidelines of the Office of Management and Budget (OMB) Circular A-133, and

WHEREAS, in order to meet the requirements of OMB Circular A-133, the OFFICE requires to have performed a single compliance audit of those federal awards for each Fiscal Year, in connection with the statewide single audit, and

WHEREAS, the INSTITUTION is a member of the National Collegiate Athletic Association (NCAA) and as such, the Utah State Board of Regents requires that all revenues and expenditures for or in behalf of the INSTITUTION'S intercollegiate athletics programs, including expenditures by any outside organization, agency, or group of individuals (two or more), be subject to the minimum agreed-upon procedures specified in the NCAA audit guide *NCAA Financial Audit Guidelines* ("NCAA Agreed-Upon Procedures"), and

WHEREAS, in order to meet the above requirements, the OFFICE requires to have performed such NCAA Agreed-Upon Procedures for the INSTITUTION'S intercollegiate athletics programs for each Fiscal Year, and

WHEREAS, the INSTITUTION has bonds outstanding with related indentures and agreements which require financial and compliance audits, and

WHEREAS, in order to meet the requirements of said bond agreements, the OFFICE requires to have performed the audit work necessary to receive a report on compliance with contractual provisions of each bond agreement.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties hereto, legally intending to be bound hereby, do covenant and agree for themselves and their respective successors and assigns, as follows:

1. The AUDITOR shall, in good faith, perform the following services:

a. Report on Financial Statements

For each Fiscal Year, the AUDITOR, in accordance with generally accepted auditing standards, as promulgated by the American Institute of Certified Public Accountants (AICPA); the AICPA *Audits of Colleges and Universities* audit and accounting guide; and *Government Auditing Standards*, published by the U.S. General Accounting Office; shall audit the financial statements and records of the INSTITUTION, and shall issue an auditor's opinion on the INSTITUTION'S financial statements. Such financial statements shall be prepared in conformity with generally accepted accounting principles. A separate report on compliance and on internal control over financial reporting, as referenced below, shall also be issued.

- (1) The OFFICE agrees that prior to making use of, or reference to, the AUDITOR's report in any document other than the state's *Comprehensive Annual Financial Report* and the OFFICE's *Statewide Single Audit Report*, the OFFICE will provide AUDITOR with a draft of the document to read and obtain AUDITOR's approval for the inclusion or incorporation by reference of the report, or the reference to AUDITOR prior to such document's printing and distribution. Any fees for the inclusion or reference would be agreed upon at the time of approval.

b. Management Report Based on the Audit of the Financial Statements

The following sections of the Management Report for each Fiscal Year should be bound together in a single document.

- (1) Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards* (The most current AICPA examples in effect at the time the reports are issued are to be followed.)
 - The AUDITOR shall report on their testing of compliance with laws and regulations performed as part of the financial and compliance audit. The report must describe the scope of the AUDITOR'S testing of compliance and must identify all instances or likely occurrences of irregularities or illegal acts unless clearly inconsequential, and other noncompliance (for example, a violation of a contract provision) that is material to the financial statements.
 - The AUDITOR shall report on their understanding of the INSTITUTION'S internal control over financial reporting and the assessment of control risk made as part of the financial and compliance audit. The report shall identify as a minimum: (a) the scope of the AUDITOR'S work in obtaining an understanding of the internal control over financial reporting and in assessing the control risk, (b) the reportable conditions, including the identification of material weaknesses, identified as a result of the AUDITOR'S work in understanding and assessing the control risk.

(2) Findings and Recommendations

The AUDITOR shall report findings and recommendations relative to internal control over financial reporting, compliance with laws and regulations, adherence to generally accepted accounting principles, and efficiency of operations. The report shall contain all findings required to be reported by *Government Auditing Standards* including reportable conditions and all instances or indications of illegal acts.

All findings and recommendations should be fully developed, including a title, statement of condition, cause, criteria, effect, and recommendation. Findings should be placed in proper perspective by relating them to the universe tested and be quantified in terms of dollar value, if appropriate.

The AUDITOR shall request written responses from INSTITUTION officials for each recommendation and shall include such responses in the report. If the INSTITUTION declines the opportunity to respond, the AUDITOR shall so state in his report.

(3) Repeated Findings and Recommendations

The AUDITOR shall clearly identify any findings or recommendations in the management report that were repeated from the prior year's management report.

c. Report on the INSTITUTION'S Portion of the Statewide Single Audit

For each Fiscal Year, the AUDITOR, in accordance with the standards cited above and the additional standards contained in the Single Audit Act of 1984 as amended, OMB Circular A-133, AICPA Audit and Accounting Guide *Audits of State and Local Government Units*, and AICPA Statement of Position 98-3 shall issue a report with the components identified below, as applicable. The components shall be bound together in a single report. Additionally, this report is intended for the information and use of management and the OFFICE and should not be sent to federal agencies, except as may be required by applicable laws, rules, regulations or professional standards, since only the *Statewide Single Audit Report* is intended for federal agencies. The AUDITOR shall give the OFFICE prior notice before sending, or causing to be sent, any information directly to a federal agency.

(1) Independent auditor's report in accordance with OMB Circular A-133 on:

- C Compliance with requirements applicable to each major program
- C Internal control over compliance
- C Supplementary Schedule of Expenditures of Federal Awards

The independent auditor's report shall be done in accordance with the current AICPA standards and reporting examples in effect at the time the report is issued. This report should be modified to indicate that the audit is the component unit's portion of the statewide single audit, since the scope of work is based on a statewide single audit.

(2) The INSTITUTION'S Schedule of Expenditures of Federal Awards and accompanying Notes. To standardize the reporting formats among the various institutions and to enhance combining of the institutions into the *Statewide Single Audit Report*, the Schedule of Federal Financial Assistance and accompanying Notes must be prepared in accordance with OMB Circular A-133 and the guidelines of the State Division of Finance.

(3) Schedule of Findings and Questioned Costs in accordance with OMB Circular A-133 consisting of:

- C Summary of Auditor's Results
- C Findings related to the audit of the financial statements
- C Findings and questioned costs related to the audit of major programs

Any findings resulting from the financial audit related to the INSTITUTION'S federal assistance programs that are required to be reported under OMB Circular A-133 shall be reported along with other findings and recommendations as described in section 1.b.(2). Findings required to be reported under OMB Circular A-133 include: reportable conditions in internal control and material noncompliance related to a statewide major program; known or likely questioned costs greater than \$10,000 for a major program; known questioned costs greater than \$10,000 for a program not audited as major (on a statewide basis); known fraud unless otherwise reported; and, instances where the summary schedule of prior audit findings materially misrepresents the status of any prior year audit finding.

As required by OMB Circular A-133, all findings and recommendations should include appropriate federal identification information including CFDA number and title, award number and year, name of federal agency or pass through entity, and questioned cost amount, if any. All findings should also be fully developed, including a title, statement of condition, cause, criteria, effect, and recommendation. Findings should be placed in proper perspective by relating them to the universe tested and be quantified in terms of dollar value, if appropriate.

The AUDITOR shall request a written corrective action plan from INSTITUTION officials for each finding required to be reported under OMB Circular A-133 and shall include it in the report.

(4) Status of Prior Findings and Recommendations (as applicable)

As required by OMB Circular A-133, the AUDITOR shall perform appropriate procedures to assess the reasonableness of the summary schedule of prior audit findings information prepared by the INSTITUTION and included in the statewide summary schedule of prior audit findings coordinated by the State Division of Finance.

Scope of Single Audit Work

Based on the current statewide plan, the AUDITOR is only required to test the _____ program at the INSTITUTION. As discussed in section 1.c. above, the AUDITOR shall also audit the Schedule of Expenditures of Federal Awards and perform follow up procedures to assess the reasonableness of the status of any prior finding related to the INSTITUTION reported in the statewide summary schedule of prior audit findings. As applicable, all single audit work shall be done in accordance with OMB Circular A-133 and the OMB Circular A-133 Compliance Supplement for single audits.

The OMB Circular A-133 audit (single audit) is done on a statewide basis. The scope of work will be determined by the OFFICE'S statewide single audit plan. Any single audit work performed at an institution will be done solely in support of the statewide single audit. The _____ programs are both Type A programs at the combined state level. However, it is anticipated that any single audit work necessary for those programs will be done on a statewide basis by the OFFICE.

The statewide threshold for Type A programs is approximately \$5,765,000. If the INSTITUTION has a program in addition to the Research and Development cluster that exceeds the statewide Type A threshold or is requested by the OFFICE to audit a high risk Type B program, the scope and cost of the work will be negotiated as an addendum to this contract or in a separate contract.

The limited scope of the single audit work at the INSTITUTION should not be construed as a restriction on the work required for the reports on the financial statements.

d. Report for NCAA

For each Fiscal Year, the AUDITOR, in accordance with generally accepted auditing standards, as promulgated by the AICPA, shall perform NCAA Agreed-Upon Procedures related to the financial systems and records of the INSTITUTION and any outside organization, agency or group of individuals that made expenditures for or in behalf of the INSTITUTION'S intercollegiate athletic programs and shall issue a report on such procedures.

e. Reports for Bond or Similar Borrowing Instruments

For each Fiscal Year, the AUDITOR, in accordance with generally accepted auditing standards, as promulgated by the AICPA, and any additional auditing or reporting requirements contained in the borrowing instrument indentures or resolutions, shall perform the work necessary in connection with the financial audit to enable the AUDITOR to issue a special report on compliance with financial covenants, terms, conditions or provisions of the bond or similar borrowing instrument indentures or resolutions for each of four separate bond or similar borrowing issues. The specific bond or similar borrowing issues will be determined by the INSTITUTION.

f. Addressing of Reports

All reports shall be addressed to the Board of Trustees and President of the INSTITUTION.

g. Delivery of Reports

- (1) The AUDITOR is to deliver 5 copies of the Report on the Financial Statements to the OFFICE, 25 copies to the INSTITUTION, and 1 copy to the State Division of Finance no later than the **first** Friday in October for each Fiscal Year.
- (2) The AUDITOR is to deliver 5 copies of the Management Report to the OFFICE and 10 copies to the INSTITUTION no later than 4 weeks after the financial statements are due.
- (3) The AUDITOR is to deliver 5 copies of the Report on the INSTITUTION'S Portion of the Statewide Single Audit to the OFFICE and 10 copies to the INSTITUTION no later than 4 weeks after the financial statements are due. Except as may be required by applicable laws, rules, regulation or professional standards, the report should not be distributed to federal agencies because it is only a portion of the statewide single audit. The OFFICE will distribute the *Statewide Single Audit Report* to all grantors of federal financial assistance to the State.
- (4) The AUDITOR is to deliver 5 copies of the NCAA Report to the OFFICE and 10 copies to the INSTITUTION no later than 4 weeks after the financial statements are due.
- (5) The AUDITOR is to deliver 5 copies of the Bond Audit Reports to the OFFICE and 10 copies to the INSTITUTION no later than 4 weeks after the financial statements are due.
- (6) The deadlines noted above may be extended by the OFFICE and the AUDITOR shall not be liable if circumstances existing beyond the reasonable control of the AUDITOR prevent completion by such dates.

2. For each Fiscal Year, all planning documents, working papers, audit programs, reports, and time control records associated with the audit of the INSTITUTION shall be retained by the AUDITOR for a minimum of three years from the date the related *Statewide Single Audit Report* for such Fiscal Year is submitted by the OFFICE to the Federal Government. The AUDITOR agrees to make these same documents available for inspection by the OFFICE upon request by the OFFICE during performance of the audit and throughout the period these documents are required to be retained, for a quality control review, a verification of key personnel obligated in the proposal, or other valid purpose. The AUDITOR also agrees to furnish copies of all planning documents, working papers, audit programs, reports, and time control records upon request. These same documents will be made available to federal agencies or others in accordance with OMB Circular A-133, *Utah Code*, or any other professional standards.

All working papers of the AUDITOR shall remain the property of the AUDITOR but shall be subject to disclosure under the Governmental Records Access and Management Act, Section 63-2-301(2)(c) of the *Utah Code*, as if they were OFFICE records unless the AUDITOR complies with *Utah Code*, Section 63-2-308. In addition, to the extent that the AUDITOR utilizes any of its property (including, without limitation, any proprietary or confidential information or trade secrets of the AUDITOR) in performing the services hereunder, such property shall remain the property of the AUDITOR and no other party hereto shall acquire any right or interest in such property.

3. The AUDITOR shall promptly inform the OFFICE regarding any indication of fraud, errors, or illegal acts that may come to their attention in connection with the audit.
4. The AUDITOR shall notify the OFFICE of all significant conferences concerning audit exceptions, accounting issues, internal control findings, or scope limitations.
5. It is understood that the not-to-exceed fee, including all out-of-pocket expenses, for the services of the AUDITOR, as set forth in paragraph 1 above, shall be as follows:

| <u>Fiscal Year</u> | <u>Financial Audit</u> | <u>Single Audit</u> | <u>NCAA Audit</u> | <u>Bond Audit</u> |
|--------------------|------------------------|---------------------|-------------------|-------------------|
| 1999 | \$ | | | |
| 2000 | | | | |
| 2001 | | | | |
| 2002 | | | | |
| 2003 | | | | |

6. It is understood that this contract will remain in force until December 31, 2003 unless terminated earlier in accordance with the terms hereof. However, the parties may replace or revise this contract at any time through addenda approved by the AUDITOR and OFFICE. Any alteration in the fee schedule must be approved before costs are incurred .
7. It is understood that the OFFICE shall make all payments to the AUDITOR when due regardless of whether or not the OFFICE has arranged reimbursement from the INSTITUTION or any other party.
8. Separate monthly progress billings to the OFFICE are allowed for time and expense incurred during the audit with the stipulation that progress billings cannot exceed 75% of the fees stated above. Billings for interim test work up through June 30 of each Fiscal Year should be submitted to the OFFICE by July 15. A statement of the total hours incurred shall be submitted with the final billing. The statement of actual hours incurred must separately report hours incurred for services performed in connection with the financial audit, the single audit, the NCAA agreed-upon procedures, and the bond audit.

9. Final payment shall be made upon the following:
 - a. Completion of the audit.
 - b. Completion of the OFFICE'S review of the inclusion of the INSTITUTION'S financial statements in the State's financial statements.
 - c. Receipt of the AUDITOR'S reports as stipulated in paragraph 1.g.
 - d. Receipt of a final billing statement and a statement of total hours incurred.
10. It is expressly understood and agreed that in no event will the amounts to be paid by the OFFICE to the AUDITOR under this contract exceed the fees as set forth in this contract.
11. Payments by the OFFICE are expressly subject to legislative appropriation. Therefore, in the absence thereof, the OFFICE shall give the AUDITOR immediate written notice and this Agreement shall be terminated.
12. The AUDITOR agrees, to the extent actually known by partners in the Salt Lake City, Utah office of the AUDITOR, not to arrange for or accept auditing or non-auditing work with the INSTITUTION without the express written approval of the OFFICE. It is understood that the fees for any additionally approved services shall be authorized by the OFFICE.
13. The AUDITOR agrees, to the extent actually known by partners in the Salt Lake City, Utah office of the AUDITOR, to notify the OFFICE in writing prior to the AUDITOR entering into a contract for auditing or non-auditing engagements with any other State agency, institution, or division.
14. The AUDITOR agrees to notify the OFFICE in writing prior to changes of partner, manager, supervisor, or senior personnel identified as being assigned to this engagement in the AUDITOR'S bid proposal.
15. The State of Utah assumes no liability for any legal expenses, other than for its own defense.
16. The AUDITOR confirms that the AUDITOR is independent of the INSTITUTION as defined in the AICPA's *Code of Professional Conduct*, Rule 101, and, to the best of the AUDITOR'S knowledge, has met the requirements of *Government Auditing Standards*, published by the U.S. General Accounting Office, including CPE, internal quality control, and external triennial quality control review.
17. The AUDITOR confirms that they are properly licensed for public practice as a certified public accounting firm in the State of Utah.
18. The AUDITOR agrees not to discriminate against any individual because of race, color, religion, age, sex, disability, or national origin, and that these shall not be a factor in consideration for employment, selection for training, promotion, transfer, recruitment, rates of pay, or other forms of compensation, demotion, or separation.
19. The AUDITOR hereby agrees to indemnify and save harmless the OFFICE, the INSTITUTION and their officers, agents, and employees ("Indemnified Parties"), solely from and against any and all physical damage to tangible personal property or bodily injury to or death of persons, resulting directly and proximately from the negligence or willful misconduct of the AUDITOR during the performance of services hereunder; provided, however, that if there also is fault on the part of any Indemnified Party, the foregoing indemnification shall be on a comparative fault basis.

In no event shall the AUDITOR be liable for any consequential, special, indirect, incidental, punitive or exemplary loss, damage or expense relating to this Contract or the services to be performed under this Contract. In addition, the OFFICE agrees that the AUDITOR's liability shall be limited to the dollar amount of fees paid by the OFFICE

to the AUDITOR under this Contract, except to the extent finally judicially determined to have resulted from the bad faith or willful misconduct of the AUDITOR.

As a condition to the AUDITOR'S indemnification obligation hereunder, the Indemnified Parties seeking indemnification shall give the AUDITOR prompt notice of any claim for which indemnification may be sought and shall cooperate with the AUDITOR in connection therewith. The AUDITOR shall be entitled to control the handling of any such claim and to defend or settle the same, in the AUDITOR's sole discretion, with counsel of the AUDITOR's own choosing. In the event of a claim by the AUDITOR of comparative fault of an Indemnified Party, the Indemnified Party shall have the right to obtain its own counsel to represent, defend and settle that part of the claim for which comparative fault is at issue.

20. Lack of reasonable cooperation by the INSTITUTION is understood to be a defense to any breach of contract by the AUDITOR. Reasonable cooperation is defined as compliance with the Memorandum of Understanding between the INSTITUTION and the OFFICE, and the Letter of Engagement between the INSTITUTION and AUDITOR. Both documents are attached to this Contract for reference. The Letter of Engagement is to be revised yearly.
21. The OFFICE hereby claims governmental immunity for itself and its employees against any and all fines, penalties, fees, cancellation or termination, or commutation charges, or any other expenses as a result of termination of this contract or for failure of the legislature to appropriate sufficient funds.
22. Said AUDITOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State of Utah or its agencies, including the INSTITUTION in any agreement, settlement, liability, or understanding whatsoever, and shall not perform any acts as agent for the State of Utah except as herein expressly set forth.
23. This contract may be terminated upon 30 days written notice by either party for convenience without any liability except for any liability or obligation that arose prior to the actual termination date, and may be immediately terminated for cause.
24. The AUDITOR shall provide the INSTITUTION with an engagement letter in accordance with professional standards to specify the responsibilities of the AUDITOR and INSTITUTION as it relates to the conduct of the audits. The terms of the engagement letter shall be consistent with the terms of this Agreement. In the event there are inconsistencies, the terms of this Agreement shall govern and control.
25. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable.
26. With respect to the subject matter hereof, this Agreement constitutes the entire agreement between the parties hereto and supersedes all other oral or written representations, understandings or agreements.
27. Except as provided for herein, no party may assign, transfer, or delegate any of its rights or obligations hereunder without the prior written consent of the AUDITOR and the OFFICE.
28. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

IN WITNESS THEREOF, the AUDITOR and the OFFICE have executed this contract as of the date first indicated above.

CPA FIRM

Date

UTAH STATE AUDITOR'S OFFICE

Auston G. Johnson, Utah State Auditor Date

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ACKNOWLEDGMENT OF RECEIPT:

DIVISION OF FINANCE

(Division of Purchasing Delegation Number: DGR196)

Date